

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:1-PLR-130060-02

Date:

September 13, 2002

Legend:

Parent =

Acquiring =

Target =

Business Y =

m percent =

n percent =

Date 1 =

State A =

State A Act =

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Dear

This letter responds to your letter dated May 24, 2002, which requests rulings on certain Federal income tax consequences of a proposed transaction. Additional information was received in subsequent letters dated August 22, September 10, and September 13, 2002. The material information submitted for consideration is summarized below.

SUMMARY OF FACTS

Parent, a State A corporation, is the common parent of a consolidated group. Parent is engaged, through its subsidiaries, in Business Y. Parent wholly owns Acquiring, a State A corporation, and Parent and Acquiring collectively own all of the single class of voting common stock of Target, which is also a State A corporation engaged in Business Y. Parent and Acquiring own, respectively, m and n percent of the stock of Target, which they acquired on Date 1 through a taxable reverse subsidiary cash merger (the "Cash Merger"). Prior to Date 1, Target's stock was publicly traded.

For valid business reasons, the following transaction is proposed:

- (i) Parent will contribute its m percent interest in Target to Acquiring in exchange for additional shares of Acquiring voting stock.
- (ii) Target will file a Certificate of Conversion and Certificate of Formation with the Secretary of State of State A, and convert from a State A corporation to a State A single member limited liability company. The conversion will occur pursuant to State A Act.

REPRESENTATIONS

The following representations have been made in connection with the proposed transaction:

- (a) The fair market value of the Acquiring stock received by Parent will be approximately equal to the fair market value of the Target stock surrendered by Parent in the exchange.
- (b) There is no plan or intention for Acquiring or any person related (as defined in Treas. Reg. § 1.368-1(e)(3)) to Acquiring, to acquire, during the five-year period beginning on the date of the transaction, with consideration other than Acquiring stock, Acquiring stock furnished in exchange for a proprietary interest in Target in

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the transaction, either directly or through any transaction, agreement, or arrangement with any other person.

- (c) During the five-year period ending on the date of the transaction, with the exception of the Cash Merger: (i) neither Acquiring nor Target, nor any person related (as defined in § 1.368-1(e)(3)) to Acquiring or Target, will have acquired Target stock with consideration other than Acquiring stock; and (ii) no distributions will have been made with respect to Target stock (other than ordinary, regular dividend distributions) either directly or through any transaction, agreement, or arrangement with any other person.
- (d) Acquiring will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately prior to the transaction. For purposes of this representation, amounts used by Target to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer will be included as assets of Target held immediately prior to the transaction.
- (e) After the transaction, Parent will be in control of Acquiring within the meaning of § 368(a)(2)(H)(i) of the Internal Revenue Code.
- (f) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business.
- (g) The total adjusted bases and the fair market value of the assets of Target transferred to Acquiring will each equal or exceed the sum of the liabilities assumed by Acquiring (as determined under § 357(d)). The liabilities of Target assumed (as determined under § 357(d)) by Acquiring were incurred by Target in the ordinary course of its business and are associated with the assets transferred.
- (h) Following the transaction, Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in a business.
- (i) At the time of the transaction, Acquiring will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Acquiring that, if exercised or converted, would affect Parent's acquisition or retention of control of Acquiring, as defined in § 368(a)(2)(H)(i).
- (j) Acquiring, Target and Parent will each pay their respective expenses, if any, incurred in connection with the transaction.

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- (k) There is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.
- (l) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (m) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

RULINGS

Based solely on the information submitted and the representations as set forth above, we hold as follows:

- (1) For Federal income tax purposes, the transaction will be treated as (i) a transfer by Target of all of its assets directly to Acquiring in exchange for Acquiring stock and the assumption by Acquiring of the Target liabilities, and (ii) the distribution of Acquiring stock in complete liquidation of Target.
- (2) The transfer by Target of all of its assets in exchange for Acquiring stock and the assumption by Acquiring of the Target liabilities followed by the distribution of Acquiring stock in complete liquidation of Target will be a reorganization within the meaning of § 368(a)(1)(D). Acquiring and Target will each be “a party to a reorganization” within the meaning of § 368(b).
- (3) No gain or loss will be recognized by Target upon the transfer of all of its assets to Acquiring in deemed exchange for Acquiring stock and the assumption by Acquiring of the Target liabilities (§§ 361(a), 357(a) and Treas. Reg. § 1.1502-80(d)).
- (4) No gain or loss will be recognized by Target on the deemed transfer of Acquiring stock (§ 361(c)(1)).
- (5) No gain or loss will be recognized by Acquiring upon the receipt of the assets of Target in deemed exchange for Acquiring stock (§ 1032(a)).
- (6) The basis of the assets of Target in the hands of Acquiring will be the same as the basis of those assets in the hands of Target immediately prior to the transfer (§ 362(b)).
- (7) The holding period of the assets of Target in the hands of Acquiring will include the period during which those assets were held by Target (§ 1223(2)).

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- (8) No gain or loss will be recognized by Parent upon the receipt of the Acquiring stock in exchange for its Target stock (§ 354(a)(1)).
- (9) The basis of the shares of Acquiring stock received by Parent will be the same as the basis of the Target stock surrendered in exchange therefor (§ 358(a)(1)).
- (10) The holding period of the Acquiring stock received by Parent will include the period during which Parent held the Target stock surrendered in the exchange therefor pursuant to § 1223(1), provided the Target stock is held as a capital asset on the date of the transaction.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the proposed transaction under any other provision of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction.

The rulings contained in this letter are predicated on the facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Michael J. Wilder
Senior Technical Reviewer, Branch 1
Office of Associate Chief Counsel
(Corporate)